

Appl. No. : 10/695,668
Filed : October 28, 2003

REMARKS

By way of summary, Claims 1–8 were pending in this application. In the Office Action dated August 22, 2006, Claims 1–8 were rejected. By this Amendment, Claim 4 is amended without prejudice or disclaimer, and Applicants respectfully submit that Claims 1–8 are in condition for allowance, as stated below.

Rejection of Claim 4 under §112

The Office Action rejected Claim 4 as being indefinite for failing to particularly point out and distinctly claim the subject matter which is regarded as the invention. Specifically, Claim 4 was rejected for having no antecedent basis for “said longitudinal implant axis.” Claim 4 has been amended without prejudice or disclaimer to properly introduce the recitation. The claim now recites, in part, “an outflow portion through which a longitudinal implant axis passes.” Applicants respectfully submit that the amendment to the claim corrects the claim language and that the §112 rejection of Claim 4 should be withdrawn.

103(a) Rejections of Claims 1–8

The Office Action rejected Claims 1–8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2004/0102729 to Haffner et al. Applicants respectfully traverse the rejection at least under 35 U.S.C. § 103(c)(1), which provides that “[s]ubject matter developed by another person, which qualifies as prior art . . . under [102(e)] . . . shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made . . . subject to an obligation of assignment to the same person.”

This Application was assigned to Glaukos Corporation by an assignment recorded with the Patent and Trademark Office at reel and frame number 015194/0778. The Haffner application was also assigned to Glaukos Corporation by an assignment recorded with the Patent and Trademark Office at reel and frame number 014816/0715. At the time the inventions of the present Application were made, the inventors of the claimed inventions of this Application and those of Haffner were under an obligation to assign the claimed inventions to Glaukos Corporation. Thus, under Section 103(c)(1), Haffner may not preclude patentability of this Application because the inventors of Haffner and those of this Application were subject to an obligation of assignment to the same entity, namely Glaukos Corporation.

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Applicants respectfully submit that under § 103(c)(1) Haffner may not preclude patentability of this Application, and Applicants respectfully request that the rejection of Claims 1-8 under § 103(a) be withdrawn.

CONCLUSION

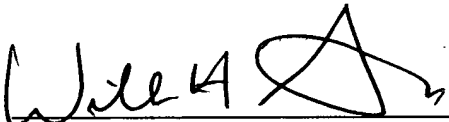
Applicants respectfully submit that the claims are in condition for allowance and have made a good faith effort to respond to the outstanding Office Action. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is cordially invited to contact Applicants' attorney, at the telephone number below, to resolve any such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: 

William H. Shreve
Registration No. 35,678
Attorney of Record
Customer No. 20,995
(949) 760-0404

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